



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Milwaukee Enrollment Services, Petitioner

vs.

DECISION

Case #: FOF - 155301

██████████ Respondent

Pursuant to petition filed February 7, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify ██████████ from receiving FoodShare benefits (FS) for one year, a hearing was held on Tuesday, March 25, 2014 at 10:15 AM, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (CARES # ██████████) is a resident of Milwaukee County who received FS benefits in Milwaukee County from June 1, 2010 through October 1, 2012.

2. On April 26, 2010, the respondent submitted a Six Month Report Form (SMRF) to the agency. The only income reported was existing employment at [REDACTED]. The respondent was approved to receive \$194/month in FS benefits effective May 1, 2010.
3. In the 1st quarter of 2010, respondent commenced employment at [REDACTED]. She did not report this employment on her SMRF in April, 2010. The employment at [REDACTED] ended during the 3rd quarter of 2010.
4. Respondent commenced employment at Regency during the 2nd quarter of 2010.
5. On November 16, 2010, the respondent completed a renewal. The only employment reported was [REDACTED]. The respondent was approved to receive \$200/month in FS benefits effective November 1, 2010.
6. On May 3, 2011, the respondent submitted a SMRF. The only employment reported by the respondent was [REDACTED]. The respondent was approved to continue receiving \$200/month in FS benefits.
7. On May 18, 2011, the respondent's employment at [REDACTED] ended. Respondent commenced employment with [REDACTED] in the 2nd quarter of 2011.
8. On November 18, 2011, a Notice of Decision was issued informing the respondent that her FS benefits would end effective December 1, 2011 for failure to complete her renewal.
9. On May 31, 2012, respondent reapplied for FS benefits. She reported earned income from [REDACTED]. The case was pended for verification of employment and income.
10. On June 14, 2012, the agency approved expedited FS benefits of \$200 for June, 2012. A Notice of Decision was issued to the respondent on June 15, 2012.
11. On June 21, 2012, the agency received verification that respondent's employment with [REDACTED] ended on May 30, 2012.
12. On June 22, 2012, the agency issued a notice of decision to the respondent informing her that she would receive \$200/month in FS benefits effective July 1, 2012. It also informed the respondent that she must report to the agency if her gross monthly income exceeds \$1180.
13. For July, 2012, the respondent received \$1854 in unemployment compensation benefits. The respondent was required to report her income to the agency by August 10, 2012.
14. On July 17, 2012, the respondent commenced employment with [REDACTED]. She earned \$3648.88 in August, 2012. Respondent did not report her employment or income to the agency.
15. On October 19, 2012, the agency issued a Notice of Decision informing the respondent that her FS would close October 31,
16. On December 4, 2013, the agency requested actual income verification from [REDACTED] and [REDACTED]. On January 21, 2014, the agency requested actual income verification from [REDACTED].

17. On February 4, 2014, the agency issued Notifications of FS Overissuance to the respondent informing her that the agency intends to recoup an overissuance of FS benefits in the amount of \$3,564 for the period of June 1, 2010 – November 30, 2011 and \$400 for the period of September 1, 2012 – October 31, 2012.
18. On February 14, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that respondent concealed information by failing to report employment and income.

DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

FoodShare Wisconsin Handbook, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 49.795(2-7).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

At the hearing, the respondent conceded she had not reported her employment information as required. She stated that she has not contested the overissuance and has made arrangements to repay. She explained that she had a lot of job transitions and that some jobs started off as temporary jobs.

The agency produced sufficient evidence to establish that the respondent committed an IPV and intended to commit an IPV when she failed to accurately report her employment. The respondent’s explanation does not sufficiently explain why she did not accurately report her various jobs at the time of renewal or when her income exceeded reporting requirements. The agency’s evidence, including the various renewals, notices from the agency and actual employment and income verification is sufficient to show that the respondent committed and intended to commit an IPV.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FS program rule specifying that misrepresenting eligibility to receive FS benefits is prohibited.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner’s determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause

for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

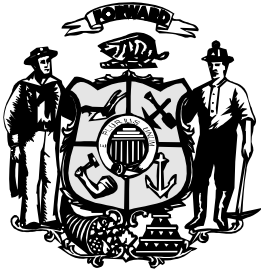
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of April, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Miles - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
Pamela Hazley - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 23, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Pamela.Hazley@dhs.wisconsin.gov